

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

*
THE ESTATE OF YARON UNGAR, ET AL., Case No:

Plaintiffs 00-105L

vs.

THE PALESTINIAN AUTHORITY;
ET AL.,

Defendants

* *

VIDEOTAPED RULE 30 DEPOSITION OF:
SALAM FAYYAD
EAST JERUSALEM
JULY 28, 2010

Videotaped Rule 30 deposition of SALAM FAYYAD, taken in the above-entitled cause pending in the United States District Court, District of Rhode Island, pursuant to notice, before ISABELLE KLEBANOW, RPR, CT No. 311, Stenographer, at the Ambassador Hotel, East Jerusalem, on Wednesday, the 28th day of July, 2010, at 4:15 p.m. Jerusalem time.

REPORTED BY: ISABELLE KLEBANOW, RPR, CT NO. 311

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 Osama Saadi
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 19
 20
 21
 22
 23
 24
 25

1 PROCEEDINGS
 2 THE COURT REPORTER: This is the videotape
 3 deposition of Salam Fayyad taken by the Plaintiffs in
 4 the matter of Ungar, et al. versus the Palestinian
 5 Authority, et al., US District Court, District of Rhode
 6 Island, Case No. 00-1056, held at the Ambassador Hotel
 7 in East Jerusalem on July 27, 2010, at 4:00 p.m.
 8 The court reporter is Isabelle Klebanow,
 9 Post Office box 29077, East Talpiot, Jerusalem 91290.
 10 The videotape specialist is Mark Coopersmith.
 11 And counsel will now state their appearance.
 12 MR. ROCHEON: Thank you. On behalf of the
 13 Palestinian Authority and the PLO, you have Mark Rochon,
 14 Laura Ferguson, Andrew Wise. Also here are George Salem
 15 and Osama Saadi, who are counsel for the Prime Minister.
 16 MR. WISTOW: Max Wistow for the Plaintiffs.
 17 MR. STRACHMAN: David Strachman for the
 18 Plaintiffs.
 19 MS. LASHNER-LEITNER: Nitsana Lashner-
 20 Leitner.
 21 THE COURT REPORTER: Okay. I need to --
 22 MR. WISTOW: -- swear the witness.
 23 THE COURT REPORTER: Do you swear to tell
 24 the truth, the whole truth, and nothing but the truth,
 25 so help you God?

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1 MR. FAYYAD: I do.
 2 THE COURT REPORTER: Thank you very much.
 3 DIRECT EXAMINATION BY MR. WISTOW:
 4 Q. Firstly, I wanted to ask you, how should I
 5 address you? Is it all right if I call you Mr. Fayyad?
 6 A. That's fine. Yes.
 7 Q. I understand that, at the present time, you are
 8 overseeing the American cases involving victims under
 9 the American Anti-Terrorism Act on behalf of the PLO and
 10 the PA, is that true?
 11 A. As part of my over-all responsibility as Prime
 12 Minister and Minister of Finance.
 13 Q. I'm not suggesting that's your sole duty. But
 14 that is part of your duties, is it not?
 15 A. Part of what I do, yes.
 16 Q. And you've tried to familiarize yourself with the
 17 Ungar case, have you not?
 18 A. Yes.
 19 Q. And do you understand where the Ungar case sits
 20 at the present time in the Federal Court? What its
 21 status is?
 22 A. Yes, I do.
 23 Q. Would you tell me what your understanding is.
 24 A. My understanding is that I am being deposed here
 25 in connection with our attempt to have the case

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1 that fair?

2 MR. ROCHON: Objection. Asked and answered.

3 MR. WISTOW: That's one of the things you're
4 not supposed to do under our local rules. You just
5 object, okay? Or instruct him not to answer, if you
6 wish.

7 MR. ROCHON: Thank you for the suggestions.

8 Q. Is it fair to say that, as you sit here now,
9 under oath, you have no present recollection of learning
10 of this order?

11 It may be you've forgotten it -- you knew it and
12 forgot it -- but you have no recollection? Is that
13 fair?

14 A. That's exactly what I meant when I said I don't
15 remember really.

16 Q. Okay. So, as we sit here today, you have no
17 recollection of ever learning of the order?

18 MR. ROCHON: Objection.

19 Q. Is that fair?

20 MR. ROCHON: Objection.

21 MR. WISTOW: I'm entitled to get a straight
22 answer.

23 MR. ROCHON: Objection.

24 A. I just gave you one.

25 Q. Is it fair --

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1 A. If what you said means I don't remember, then
2 that's what I really mean to say.

3 Q. Okay. Now, did you ever learn whether or not the
4 United States complied with Judge Marrero's order?

5 A. I don't remember either.

6 Q. Maybe I can refresh your recollection.

7 A. Okay.

8 MR. ROCHON: If we show the witness the one
9 that gets marked, we'll have two on our side --

10 MR. WISTOW: Okay. Sure.

11 MR. ROCHON: -- if that's agreeable.

12 MR. WISTOW: That's fine.

13 MR. ROCHON: If that's okay with the court
14 reporter.

15 (Off-the-record discussion while exhibit is
16 marked).

17 (Exhibit No. 2 marked for identification.)

18 Q. Now, do you know --

19 MR. ROCHON: That's how this -- by doing it
20 that way, then we do get the two copies, so he's got
21 one. We've got two.

22 The court reporter doesn't read them. She
23 marks them.

24 MR. WISTOW: That's fine.

25 Q. Have you ever, to your recollection, seen this

1 document before?

2 (Witness peruses document.)

3 A. I don't know if I remember seeing this document
4 specifically. I mean this very document.

5 Q. Okay. I would like to direct your attention --

6 A. Yes.

7 Q. -- to eight lines from the bottom of the first
8 page where it starts to read, The United States
9 respectfully informs the Court that it declines to file
10 a Statement of Interest concerning the Rule 60 issues
11 presented by this case, but will continue to monitor
12 this and other cases like it.

13 MR. ROCHON: (Indicating).

14 MR. WISTOW: Did you just point something to
15 him?

16 MR. ROCHON: Yes. The sentence we're
17 reading so he could find it on the page. He was asking
18 for help.

19 MR. WISTOW: Okay.

20 Q. If you need assistance in finding something, I'd
21 ask you to tell me that you can't find it.

22 A. Fine.

23 Q. Is that fair?

24 A. Fair.

25 Q. Okay. Have you located it?

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1 A. I have.

2 Q. Okay. Have I read it correctly?

3 A. You have.

4 Q. Okay. Do you understand that to mean that, in
5 response to Judge Marrero's order to the United States
6 to state whether or not it would file a Statement of
7 Interest, the United States responded by saying they
8 would not file a Statement of Interest in this case --
9 the Knox case -- or any similar cases.

10 Do you understand that to mean that?

11 A. I understood that to be the case. I'd have to
12 read through the rest of the letter, or to continue that
13 sentence where it says, But will continue to monitor
14 this and other cases like it.

15 Q. Yes. Right. I'm only talking about at the time.

16 A. Yes.

17 Q. I mean anything could happen after this.

18 A. I understand.

19 Q. But at that time --

20 A. Yes.

21 Q. -- which was February 29, 2008, if this document
22 is authentic, then the United States declined to give a
23 suggestion (sic) of interest in the Knox case -- and you
24 see, third line from the top -- or in any other of the
cases pending in other districts.

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<p>1 You see that?</p> <p>2 A. The third line --</p> <p>3 (Witness peruses document.)</p> <p>4 A. I see that, yes.</p> <p>5 Q. Okay. So did you ever learn from any source that</p> <p>6 the United States had declined to issue a Statement of</p> <p>7 Interest in the Knox case or in any of the other cases</p> <p>8 pending in other districts against the PLO and the PA?</p> <p>9 MR. ROCHON: Objection.</p> <p>10 Q. Did you ever learn that from any source?</p> <p>11 MR. ROCHON: Objection. Don't answer yet.</p> <p>12 You have to exclude conversations --</p> <p>13 MR. WISTOW: No. I don't exclude</p> <p>14 conversations. It's not a privileged communication.</p> <p>15 It's not confidential information. It's relating --</p> <p>16 MR. ROCHON: Let me just -- I'm not arguing.</p> <p>17 MR. WISTOW: I don't want any fighting. I</p> <p>18 don't exclude anything.</p> <p>19 MR. ROCHON: We're agreeing. The answer to</p> <p>20 the question will not be deemed to be a waiver of</p> <p>21 privilege.</p> <p>22 MR. WISTOW: That's right. I believe</p> <p>23 privilege has been waived for other reasons we'll get</p> <p>24 into. But I stipulate that an answer to this will not</p> <p>25 represent a waiver.</p>	<p>1 Statement of Interest in a generic sense.</p> <p>2 And that actually is what's borne out if you read</p> <p>3 a couple of lines down from where that reference which</p> <p>4 you just cited, where the letter says, At the same time,</p> <p>5 the United States remains concerned about the potential</p> <p>6 significant impact of these cases -- significant impact</p> <p>7 these cases may have on the financial and political</p> <p>8 viability of the Defendants.</p> <p>9 Q. Have you finished your answer?</p> <p>10 A. Yes.</p> <p>11 MR. WISTOW: I move to strike.</p> <p>12 THE COURT REPORTER: Could you identify the</p> <p>13 person who came in the room.</p> <p>14 MR. WISTOW: Could you identify yourself for</p> <p>15 the record, please.</p> <p>16 MR. HALLER: Mordechai Haller.</p> <p>17 THE COURT REPORTER: Spell it for me,</p> <p>18 please.</p> <p>19 MR. HALLER: M O R D E C H A I, H A L L E R.</p> <p>20 Plaintiffs' Israeli counsel.</p> <p>21 Q. Have you finished your answer, Mr. Fayyad?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember the question?</p> <p>24 A. I remember the question.</p> <p>25 The question was that -- were you aware that</p>
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<p>1 MR. ROCHON: Mr. Prime Minister, you can</p> <p>2 answer the question.</p> <p>3 A. Well, I remember that there was a process.</p> <p>4 And, as I told you myself, I myself communicated</p> <p>5 on this with the Secretary of State at the time,</p> <p>6 Condoleezza Rice, seeking help. And I understood what</p> <p>7 the Statement of Interest meant -- Statement of Interest</p> <p>8 -- a term mentioned on several occasions in my</p> <p>9 discussions with US officials.</p> <p>10 Now -- and I understood, at some point -- whether</p> <p>11 in connection with this letter or some other</p> <p>12 communication I can't remember right now -- that the US</p> <p>13 did not submit, or did not want to submit, a Statement</p> <p>14 of Interest.</p> <p>15 But I also recall that it did not mean -- that</p> <p>16 representation done by the United States, it does not</p> <p>17 mean that the administration was --</p> <p>18 (Mr. Haller enters the room.)</p> <p>19 Q. I'm sorry. I didn't hear the end.</p> <p>20 A. That it did not mean that the administration was</p> <p>21 indifferent as to what was going on.</p> <p>22 In other words, I understood that -- the way I</p> <p>23 understood it was, in a formal sense of a Statement of</p> <p>24 Interest, there was not acceptance of it. There was not</p> <p>25 a submission of it. But, at the same time, there was a</p>	<p>1 there was -- or does this not say that the United States</p> <p>2 did not want to submit a Statement of Interest.</p> <p>3 Q. No. I'm not asking you about what the letter</p> <p>4 says.</p> <p>5 A. Oh, okay.</p> <p>6 Q. I'm not. I'm asking you if you ever became aware</p> <p>7 of whether or not the United States responded to Judge</p> <p>8 Marrero by saying -- let me finish, please --</p> <p>9 A. Yes.</p> <p>10 Q. -- by saying they declined to state -- to file a</p> <p>11 Statement of Interest at that time.</p> <p>12 Did you ever become aware of that?</p> <p>13 A. As I indicated, I'm aware that there were</p> <p>14 discussions, communications, on this matter. I was</p> <p>15 aware that there was not a straightforward Statement of</p> <p>16 Interest submitted by the US government to the Court.</p> <p>17 But I also remember being told that that</p> <p>18 statement or that communication or those communications</p> <p>19 where Statement of Interest was not filed did not mean</p> <p>20 that the administration was indifferent as to the</p> <p>21 proceedings.</p> <p>22 That's my answer.</p> <p>23 Q. Okay. I'm going to press it a little bit.</p> <p>24 A. Okay.</p> <p>25 Q. I'm really not asking you to interpret what the</p>
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1 intent of the government was, the American government.
 2 I'm asking you only if you were aware that, on
 3 February 29, 2008, the United States said to Judge
 4 Marrero, and I quote, "The United States respectfully
 5 informs the Court that it declines to file a Statement
 6 of Interest concerning the Rule 60 issues presented by
 7 this case, but will continue to monitor this and other
 8 cases like it.

9 Did you ever become aware of that declination?

10 A. What I'm really trying to communicate to you, and
 11 through you to the Court, is my understanding of the
 12 nature of that communication; and, specifically, that
 13 the administration did not file a Statement of Interest
 14 in the way a Statement of Interest is technically
 15 defined.

16 But I remember, in the context of communications,
 17 suggesting that it was not interested in what was
 18 going on. That's basically my recollection of the
 19 exercise.

20 Q. Mr. Fayyad, I'm going to ask you to try not to
 21 communicate with the Court, as you just suggested you're
 22 doing.

23 Try to just answer my questions. The Court will
 24 hear my questions, will hear your answers. Under our
 25 system, I get to ask questions and, hopefully, you

1 A. I learned that. But, at the same time, I learned
 2 that the United States was not disinterested, and that
 3 that view of the United States was communicated as well.
 4 Q. Okay. The United States also expressed sympathy
 5 for the victims, did it not?

6 A. It did.

7 Q. And it expressed sympathy and interest in the PLO
 8 and PA, did it not?

9 A. It did.

10 Q. So it wasn't indifferent to either side, was it?

11 A. No. But that's not what the letter said. It's
 12 not indifferent to either side.

13 Q. That's right.

14 A. Yes.

15 Q. But the letter says they declined to file a
 16 Statement of Interest.

17 A. That's what the letter said.

18 Q. Right. Did you ever learn of that decision?

19 A. Whether in this specific case or another case, I
 20 really cannot tell you right now.

21 But I'm aware of the fact that the United States
 22 did not file a Statement of Interest in the way a
 23 Statement of Interest is construed to mean in a legal
 24 sense.

25 Q. How did you learn that?

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1 answer them.

2 I'm not trying to tell half the story. You have
 3 lawyers. They can bring out what they want.

4 Do you understand?

5 A. I respect the system, and I am doing my best to
 6 answer your questions, sir.

7 Q. Okay. My question is, did you ever learn that
 8 Judge Marrero was informed that the United States
 9 declined to file a Statement of Interest.

10 MR. ROCHON: Objection.

11 Q. Can you answer that either yes, no, or I don't
 12 remember?

13 MR. ROCHON: Objection.

14 Q. Can you?

15 MR. ROCHON: You can answer the question.

16 A. As I said, you know, I'm aware that there was
 17 activity along those lines, but I do not remember each
 18 and specific case or specific communication.

19 But the substance of what I recall is what I told
 20 you.

21 Q. Okay. Did you learn, in substance --

22 A. Yes.

23 Q. -- that the United States declined to file a
 24 Statement of Interest? Did you learn that?

25 MR. ROCHON: Objection. You may answer.

1 MR. ROCHON: Objection.

2 A. I've had discussions on this with US officials
 3 all the time.

4 Q. Really?

5 A. Yes.

6 Q. When was the last time you had a discussion with
 7 a US official about this?

8 A. Not the recent period.

9 Q. Well, you said all the time. I'm just asking you
 10 when the last time was.

11 A. I'm trying to remember now. All the time when
 12 this was being activated and all.

13 Q. Take your time, Mr. Fayyad. There's no rush.

14 A. I can actually give you a precise date if I can
 15 remember when it is that I visited the State Department
 16 and met with lawyers at the State Department.

17 I'd have to go back to my itinerary, my travel
 18 records, and I'd be able to provide you with that.

19 Q. Please understand --

20 A. In other words, it's not -- I know that I did
 21 discuss it.

22 Q. Okay. Please understand. I don't expect you to
 23 have exact dates.

24 A. Okay.

25 Q. Can you give me an approximate date?

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1 A. Yes. That I can.	1 A. Precisely, I do not remember. In connection with
2 Q. What is that?	2 this particular trip, I don't really remember now.
3 A. Let me -- not necessarily in connection with this	3 Q. Okay. Would it be fair to say you were asking
4 case, but generally, you know, cases filed against us in	4 them to see if a Statement of Interest could be filed?
5 the United States.	5 MR. ROCHON: Objection. Form and content.
6 So I believe it must have been a year ago.	6 In have a substantive objection on this.
7 That's when I believe I officially visited the United	7 You may want to take it outside the presence
8 States. A year ago.	8 of the witness so you don't think I'm engaging in
9 Again, I can look it up and provide with you the	9 speaking objections. But I need to discuss it with you
10 records.	10 first before I take it to the judge.
11 Q. I'm only asking you for your best recollection.	11 MR. WISTOW: Some kind of diplomatic
12 A. Yes.	12 privilege?
13 Q. And I understand all you can give me, without	13 MR. ROCHON: Yes.
14 checking your records, is your best recollection.	14 MR. WISTOW: I have a -- it says, This
15 A. My best recollection is that the last time I had	15 judgment has already been the subject of diplomatic
16 a discussion on cases -- on litigation against us in the	16 communications at the highest levels between our
17 United States in connection with these matters --	17 country's representatives and the State Department.
18 general matters. Not necessarily this case -- was a	18 You've told the Court about this, both the
19 year ago --	19 Circuit Court and the Federal Court. And, you know,
20 Q. Okay.	20 you're flaunting this issue. Now you tell me that I
21 A. -- or thereabouts.	21 can't ask him about it? Okay. Just tell him not to
22 Q. Okay. When we say litigation generally and not	22 answer. It's okay with me.
23 necessarily these cases --	23 MR. ROCHON: Well, we can take it to the
24 A. Yes.	24 Magistrate Judge. That's why we have him available, so
25 Q. -- we're talking about the so-called terrorist	25 you can get a ruling on it.
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1 claims, correct?	1 THE VIDEOGRAPHER: Excuse me. I have to
2 A. Yes.	2 change the tape.
3 Q. Claims against the PLO and PA that they were	3 MR. WISTOW: Well, you know what?
4 involved somehow in terrorist activities?	4 MR. ROCHON: We're going to go off the
5 A. Yes.	5 record.
6 Q. So you spoke to somebody at the State Department	6 MR. WISTOW: You know what? I'm perfectly
7 about a year ago?	7 happy with an instruction not to answer. I don't want
8 A. Yes.	8 to wait -- I have limited time today. I want to get
9 Q. Who was that?	9 this thing moving.
10 A. I don't -- lawyers.	10 MR. ROCHON: We have to go off the tape.
11 Q. Can you help me out a little bit?	11 You can finish, but your tape's running out and you
12 A. I can't remember the names right now.	12 won't be on the record.
13 Q. Okay. Do you remember their titles?	13 THE VIDEOGRAPHER: Going off the record at
14 A. I can't.	14 5:18.
15 Q. Do you remember how many there were?	15 (Short recess taken.)
16 A. Maybe three, four. I really don't remember.	16 THE VIDEOGRAPHER: Going on record at 5:20.
17 Q. So did you make -- were you accompanied by	17 MR. WISTOW: I'd ask you to reconsider.
18 anybody on your side?	18 You have affirmatively told the Court in
19 A. I really was there by myself.	19 your pleadings that one of the reasons to vacate the
20 Q. Okay. And so these three or four lawyers, you	20 motion -- 60(b)6 motion -- is that -- and I quote from
21 don't remember anybody's name?	21 your pleadings -- "This judgment has already been the
22 A. No. Not right now.	22 subject of diplomatic communications at the highest
23 Q. And do you remember if you were -- you had	23 levels between our country's representatives and the
24 written to set up an appointment, or how it came to be?	24 State Department and the governing officials in the
25 Do you remember?	25 Occupied Territories.

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<p>1 If left intact, the judgment threatens to 2 undermine the relationship between the United States and 3 the Palestinian government, a relationship that the 4 executive branch of the United States government has 5 categorized as being crucial to the Israeli-Palestinian 6 peace process."</p> <p>7 I don't know how anything could become more 8 relevant, if you're urging that as a reason. So I'm 9 asking him to tell me about all these high-level 10 conversations.</p> <p>11 MR. ROCHON: The fact of a communication 12 being made known to the Court does not waive any 13 privilege associated with it.</p> <p>14 MR. WISTOW: I'll tell you what? Why don't 15 we do this? If you could just let him answer this 16 question, if it involved asking for a Statement of 17 Interest, I'll agree that, in and of itself, that answer 18 doesn't waive any kind of privilege.</p> <p>19 MR. ROCHON: You know, you'll be leading me 20 down the primrose path. I either object or I don't. 21 You mean you'll be done in this area?</p> <p>22 MR. WISTOW: I don't know. If he says, no, 23 we didn't talk about that, then I certainly --</p> <p>24 MR. ROCHON: The problem is this. The Prime 25 Minister has a portfolio that includes things other than</p>	<p>1 MR. ROCHON: Thank you. It's now my time. 2 We're on the record. I'm just eating the 3 time. It doesn't count on the seven hours. Sometimes 4 lawyers try to use up the other guy's time. 5 (The witness leaves the room.) 6 MR. ROCHON: The Prime Minister is out of 7 the room. 8 So, look, when he communicates, it's not 9 like he goes to the State Department only about these 10 cases. He's there about a host of things. He's trying 11 to get money. He's trying to get security. He's trying 12 to -- 13 And so none of these things are seen in 14 isolation. So you can't, you know, discuss what did you 15 tell them about this because it's all part of a unified 16 conversation. 17 MR. WISTOW: I didn't even ask him that. 18 All I said to him was, did you ask them if they would 19 file a Statement of Interest in these cases. 20 That's all I asked. That's pretty 21 straightforward. 22 MR. ROCHON: If your question is that, and 23 you're not going to claim it's a waiver of diplomatic 24 privilege -- 25 MR. WISTOW: I will not.</p>
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<p>1 this case. So he doesn't communicate only about this 2 case.</p> <p>3 MR. WISTOW: Oh, Please. I don't want to 4 ask him anything that's not related to this case. That 5 would be inappropriate, and I certainly wouldn't do it.</p> <p>6 MR. ROCHON: The problem is either -- see, I 7 asked the witness to step out because I don't want you 8 suggest I'm making speaking objections.</p> <p>9 MR. WISTOW: Why don't you step out.</p> <p>10 MR. ROCHON: Just escort the Prime Minister 11 out. 12 (The witness leaves the room.) 13 MR. WISTOW: No. I don't want -- 14 MR. ROCHON: I'll take the time. I'll eat 15 the time.</p> <p>16 MR. WISTOW: I know. But we have to keep 17 track of the time.</p> <p>18 MR. ROCHON: It's all right. We can just 19 note when we start this discussion. I'll eat the whole 20 time.</p> <p>21 MR. WISTOW: Why don't you do it. Why don't 22 we -- you're the one who's --</p> <p>23 MR. ROCHON: What time is it now, 24 Mr. Coopersmith?</p> <p>25 THE VIDEOGRAPHER: The time is 5:22.</p>	<p>1 MR. ROCHON: As long as we're on my time, do 2 you want to tell me -- he's out of the room. Do you 3 want to tell me where else you're going to go, and we 4 can hash out the diplomatic issues now on my nickel? 5 MR. WISTOW: I'd rather not -- 6 MR. ROCHON: All right. 7 MR. WISTOW: -- because I don't know where 8 I'm going, if you haven't figured that out yet. It's a 9 little loosey-goosey. 10 MR. ROCHON: I'm offering it to you because 11 we'll be back on your time soon. 12 MR. WISTOW: I guess, in fairness to you, if 13 he says yes, he did ask them for it, I'm going to ask 14 him did they say yes, did they say no, did they say 15 maybe. That's all. 16 MR. ROCHON: Well, then -- well, I know 17 that's all that you -- that's what implicates diplomatic 18 privilege. 19 MR. WISTOW: I'm just asking a narrow issue. 20 MR. ROCHON: I'm going to have to take this 21 to the Magistrate Judge. 22 I'm not going to instruct him not to answer 23 because you're trying to set me up for some kind of 24 sanctions if I instruct him not to answer. I've got a 25 Magistrate Judge available because we started so late.</p>